DOCKET NO: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
	:	
V.	:	
	:	AT NEW HAVEN
YESHIVA OF NEW HAVEN, INC. FKA	:	
THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	JANUARY 21, 2021

DEFENDANT'S REPLY RE: PLAINTIFF'S OBJECTION TO MOTION TO (1) REOPEN JUDGMENT FOR PURPOSES OF EXTENDING THE LAW DAY AND (2) TO SUBSTITUTE BOND

The defendant, The Yeshiva of New Haven, Inc. (the "Yeshiva" or the "Defendant"), hereby submits the following reply to the *Objection to Defendant's Motion to (1) Reopen the Judgment of Strict Foreclosure for the Purpose of Extending the Law Day and (2) to Substitute a Bond* (Doc. No. 156, the "Objection"), filed by plaintiff, Eliyahu Mirlis ("Mirlis" or the "Plaintiff") in response to *Defendant's Motion to (1) Reopen the Judgment of Strict Foreclosure for the Purpose of Extending the Law Day and (2) to Substitute a Bond* (Doc. No. 153, the "Motion").

1. The Yeshiva has an absolute right to substitute a cash bond for the Judgment and the Court (Baio, J) has ruled that to be the case. Moreover, the Court has not limited that right in any way or placed an expiration date on Defendant's right to do so. Thus, Plaintiff's primary argument that the right to substitute a bond as alternate collateral in lieu of real estate securing a judgment lien has somehow expired, is incorrect.

2. First, the Court (Baio, J.) has already ordered that Defendant is entitled to substitute a $620,000 bond for the judgment lien.. As this is the law of the case, Judge Baio's decision is final and must be enforced. "The law of the case doctrine provides that when a matter has previously been ruled upon interlocutorily, the court in a subsequent proceeding in the

case may treat that decision as the law of the case, if it is of the opinion that the issue was correctly decided, *in the absence of some new or overriding circumstance*." *Levine* v. *Hite*, 189 Conn. App. 281, 297 (2019). Here, Judge Baio ruled that Defendant had the right to substitute a bond and did not limit the time of the Defendant to do so. *Memorandum of Decision*: Hearing on Valuation at 9, Doc. No. 133. No legal or factual reason exists to change this result now. Defendant is merely attempting to effectuate Judge Baio's prior ruling.

3. Second, Conn. Gen. Stat. § 52-380e does not distinguish between substitution of collateral pre- or post-judgment:

> When a lien is placed on any real…property…the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount secured by the lien. The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution. The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52-380d by first–class mail, postage prepaid, to the judgment debtor.

4. The purpose of Conn. Gen. Stat. § 52-380e is to ensure that a creditor cannot obtain a windfall or exert undue influence over a judgment debtor by taking real estate as opposed to obtaining the value of it. Given the clarity of the statute and stated legislative intent, to hold otherwise would be improper. Here, Defendant is proposing to substitute a cash bond for the value of the real estate at issue. Obtaining that cash should be preferable to Plaintiff unless Plaintiff has an improper motive for wanting the real estate.

5. Therefore, Plaintiff's reliance on *Hartford Electric Light Co.* v. *Tucker*, 183 Conn. 85 (1981) is misplaced. *Hartford Electric* analyses a different statute passed for an entirely different purpose. There, the issue had to do with a prejudgment lien that the judgment debtor sought to bond-off *post judgment*. Another case cited by Plaintiff, *Anthony R.R. Constr.*

Co. v. Mary Ellen Drive Assoc., 1994 Conn. Super. LEXIS 2044 (Conn. Super. Aug. 16, 1994) also involved a pre-judgment lien, a mechanics' lien. Thus, both *Hartford Electric* and *Anthony R.R.* Are inapposite.

6. In this case, the lien at issue is a judgment lien, not some form of prejudgment encumbrance. This case, thus, involved an entirely different procedural setting than *Hartford Electric*. Moreover, unlike the cases cited by Plaintiff, the Court (Baio, J.) has already ruled that Defendant may substitute a bond.

7. Therefore, the Court should require compliance with Judge Baio's previous ruling and permit Defendant to substitute a bond in the amount of $620,000 for the judgment lien at issue.

8. For the reasons set forth above, this Court should grant this motion and (a) extend the law day to May 2, 2022 and (b) permit the Yeshiva to substitute a bond as set forth in the *Memorandum of Decision: Hearing on Valuation* at 9, Doc. No. 133.

THE DEFENDANT:
Yeshiva of New Haven, Inc.

By: /s/ Jeffrey M. Sklarz

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing document has been served by electronic mail on the parties and counsel set forth below:

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